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10/716,258	01/15/2004	James Garth Close		6525

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/716,258

Applicant(s)

CLOSE, JAMES GARTH

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004 and 15 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-38 and 40-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-38 and 40-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 and 15 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This Office action is in response to the election filed March 6, 2006. It is noted that the responses filed March 6, 2006 and April 28, 2006 were deemed to be non-compliant and the amendment filed June 15, 2006 is acceptable. It is further noted that in the amendment filed June 15, 2006, claims 1-33, 39, and 45-47 were canceled and claims 34, 35, 40-42, and 44 were amended.

For applicant's reference, all canceled claims should NOT contain text.

Election/Restriction

Applicant's election of species (V), i.e., Figures 13A-13C and 18A-18D, and sub-species (d), i.e., Figures 16A-16D, in the reply filed on March 6, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

It is noted that applicant did not state which invention is being elected. However, since applicant canceled the claims in all groups except group II it is presumed group II is being elected.

It is noted that all pending claims, i.e., claims 34-38 and 40-44 read on the elected invention, species, and sub-species.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 34-38, 41, 43, and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 34 recites the limitation "the display base" in line 5. There is insufficient antecedent basis for this limitation in the claim. See also claim 44, lines 3 and 9.

The recitation "may be" in line 5 of claim 34 renders the claim indefinite since what "may be" to one, "may not be" to another. Thus, the metes and bounds of the claim cannot be properly ascertained since one would not know whether the claim is positively requiring the function and/or structure proceeding the recitation "may be". This rejection is also applicable to claim 37 (see line 3), claim 43 (see line 8), and claim 44 (see line 2).

The recitation "an active alignment device positioned in the first pull member channel and in the second pull member channel" in lines 32-33 of claim 34 renders the claim indefinite since this recitation is vague. *In particular*, the structural relationship is unclear, i.e., is one device positioned in both channels at the same time? *Further*, it is unclear what is meant by the use of the term "active".

Claim 35 is rendered indefinite by the language "travels within the housing" (see line 8), since it is unclear from the drawings especially, how and what structure "travels" in this way, and thus the structural relationship of the elements is unclear.

Claim 36 recites the limitation "the first display section" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 34 does not set forth a "first" section.

Claim 37 is rendered indefinite since the structural relationship between the row, the front edge and the system is unclear.

Claim 38 recites the limitation "base" in line 2. There is insufficient antecedent basis for this limitation in the claim. *Also*, it appears that --the-- should be inserted after "that" in line 2.

Regarding claim 41, the word "means" is preceded by the word(s) "spring" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim 43 recites the limitation "the second base section" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 44 is rendered indefinite since the structural relationship between the elements is unclear. *In particular*, it is unclear how one projection can be inserted into two channels.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 34, 36, 37, and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,886,699 (Johnson et al. '699).

Johnson et al. '699 disclose a product display system comprised a shelf (not shown - surface on which the base section rests); a display base section (see Figure 4) comprising a

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bottom surface (including 30 and 24) such at least a portion (at 24) of the bottom surface is in contact with the shelf when the base section *may* be placed on the shelf; the base section (see Figure 4) comprises a front edge (front of Figure 3), a first side edge (right side of Figure 3) and a second side edge (left side of Figure 3), a rear edge (near 20 in Figure 3) and a plurality of ridges (see Figure 4); the ridges comprise a first ridge (at 38 in Figure 4) and a second ridge (unnumbered - vertical portion located below 72 and extending upwardly from 30, in Figure 4) whereby a first pull member channel (at 20 in Figure 4) is located between the first and second ridge; a third ridge (at 34 near 37 in Figure 4) and a fourth ridge (unnumbered - vertical portion below 100 and extending upwardly from 24, as in Figure 4), whereby a second pull member channel (at 22) is located between the third and fourth ridges; an active alignment device (at 130 - see Figure 3) is positioned in the first and second channels, i.e., see Figure 2 where the side edges of element 130 extend across the areas defined as the channels; *with respect to claim 36*, the display section is a first section and a second section (at 60 in Figure 4) overlaps the first side edge of the first base section; *with respect to claim 37*, a front stop (160) is positioned in proximity of the front edge; *with respect to claim 44*, the front stop element (160) comprising a cover plate, and a projection (164) attached to the plate so that the projection is inserted into the first and second channels (see Figure 3).

Claims 34-37 and 40-42 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,622,874 (Hawkinson '874).

Hawkinson '874 discloses a product display system comprised a shelf (not shown - surface on which the base section rests); a display base section (see Figure 3) comprising a bottom surface (at 11 in Figure 3) such at least a portion of the bottom surface is in contact with

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the shelf when the base section *may* be placed on the shelf; the base section comprises a front edge (right side of Figure 1), a first side edge and a second side edge, and a rear edge and a plurality of ridges (see Figure 4); the ridges comprise a first ridge (vertically extending element near 32' in Figure 3) and a second ridge (vertically extending element near 24' on the left side of Figure 3) whereby a first pull member channel (above 13 in Figure 3) is located between the first and second ridge; a third ridge (vertically extending element near 31' in Figure 3) and a fourth ridge (vertically extending element near 54' in Figure 3), whereby a second pull member channel (near 25' in Figure 3) is located between the third and fourth ridges; an active alignment device (at 27' - see Figure 3) is positioned in the first and second channels, i.e., see Figure 3 where the side edges of element 27' extend across the areas defined as the channels; *with respect to claim 35*, the alignment device (27') including a housing (at 30') comprising a first slide rail positioned in the first channel and a second slide rail positioned in the second channel (see portions near 31' and 32' in Figure 3, which comprise the L-shaped members hooked around elements 31' and 32'), a rear product engagement section (at 31 and 32 in Figure 1, i.e., note the Section 112, 2nd paragraph rejection above) which travels within the housing and a drive means (35); *with respect to claim 36*, the display section is a first section and a second section (at 51' in Figure 3) overlaps the first side edge of the first base section; *with respect to claim 37*, a front stop (at 40 - see Figure 1) is positioned in proximity of the front edge; *with respect to claim 40*, the housing further comprises a first channel and a second channel (unnumbered - bound by elements 31' and 32' define above near the rails), and the rear engagement section further comprises a first slide and a second slide member (at 31 and 32 in Figure 1) each received in the first and second

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channels of the housing (see Figure 1); *with respect to claims 41 and 42*, the drive means is a spring, i.e., an elastic member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38 ad 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. '699.

Johnson et al. '699 disclose the system as advanced above.

The claims differ from Johnson et al. '699 in requiring: (a) a plurality of preformed bend markings on the base section (claim 38); and (b) the base section to have a first section with a snap feature along each side edge and a second section with snap features along each edge to engage over the snaps of the other section (claim 43).

With respect to (a), although Johnson et al. '699 do not explicitly disclose bend markings, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have provided bend markings, for ease in assembly and manufacture.

With respect to (b), Johnson et al. '699 disclose first (at 20 in Figure 3) and second (at 60, 51 in Figure 3) base sections whereby the side edges have mating structures for connection (see Figure 3).

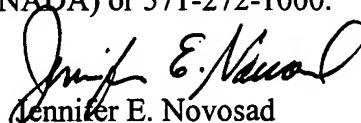
Although Johnson et al. '699 do not disclose the mating structures as snap features, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided such snap features, for increased support and stability of the system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

June 29, 2006